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December 17, 1993

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Dockets Unit
Research and Special Programs Administration
Department of Transportation
Room 8421
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Docket Nos. HM-214 and PC-1
Oil Spill Prevention and Response Plans

Dear Sir or Madam:

We represent seven agricultural organizations, the American Soybean Association, the Corn Refiners Association, the National Corn Growers Association, the Institute of Shortening & Edible Oils, the National Cotton Council, the National Cottonseed Products Association, and the National Oilseed Processors Association (the Organizations), whose members ship over 25 billion pounds of animal fats and vegetable oils annually in the United States. These shipments involve over one million railcar and tank truck movements. This letter supplements and clarifies comments and communications made on behalf of the Organizations to this docket.

The Organizations strongly support RSPA's Interim Final Rule published on June 16, 1993, as it applies to animal fats and vegetable oils. These particular agricultural products are non-toxic to aquatic and animal life. Their components are utilized by living organisms as a food source for growth and other life functions. They have no accumulating or otherwise harmful components that are toxic or carcinogenic, and they are consumed safely by wildlife and humans. The Interim Final Rule recognizes that it would not be appropriate to treat non-toxic, non-petroleum oils in the same manner as petroleum-based oils for the purposes of

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response planning or other regulation under the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. Nor is there any basis for altering the thresholds established by the Interim Final Rule for those facilities that could reasonably be expected to cause substantial harm to the environment as a result of a potential discharge of these products.

DISCUSSION

Generally, sustainable environmental regulation must be based upon reliable scientific information and must preserve the flexibility necessary to achieve environmental objectives. Consistent with this, President Clinton's Executive Order on Regulatory Planning and Review enunciates, and requires agencies to adhere to, certain principles of regulation. Exec. Order No. 12,866, 58 Fed. Reg. 51735, 51736 (1993). Among those principles are the following:

- In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.
- Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.
- Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.
- Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations. Id.

The Interim Final Rule meets both the letter and spirit of these principles. Any proposal to regulate animal fats and vegetable oils in the same manner as petroleum oils is unsupportable by any available scientific data. The ENVIRON

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Report, filed in this docket by the Organizations on June 3, 1993, finds that the presence of these products in the environment does not cause significant harm. The study reached the following conclusions with respect to the effects of potential discharges of animal fats and vegetable oils:

- e They are not toxic to the environment.
- e They are essential components to human and wildlife diets.
- e They readily biodegrade.
- e They are not persistent in the environment like petroleum oils.
- e They have a high Biological Oxygen Demand (BOD) which could result in oxygen deprivation where there is a large spill in a confined body of water that has low flow and dilution.
- e They can coat aquatic biota and foul wildlife (e.g., matting of fur or feathers which may lead to hypothermia).

The Organizations continue to seek data regarding the impact of animal fats and vegetable oils on the environment that will offer new insights to this issue. However, on the basis of the scientific data available to date, the only potential environmental harm that may result from spills of these products is the result of potential physical effects of spills of liquids in large quantities. Those potential physical effects consist of (1) the fouling of aquatic biota and wildlife that are exposed to the liquid products in high concentrations and (2) the potential oxygen deprivation from the biodegradation of high concentrations of liquid substances in confined and slow-flowing bodies of water. Fouling is not an issue in the case of substances that are solids or congeal in the temperature conditions of the natural environment.

Moreover, the likelihood that a spill of such magnitude will occur is extremely small. The industry's spill prevention efforts have resulted in an excellent environmental record for these products. A review of the data recorded and compiled by the Coast Guard reveals that from 1986 to 1992 animal fats and vegetable oils together accounted for only about 0.4 percent of the oil spill incidents in and around U.S. waters (both in terms of number of incidents and their volume). Less than half of those spills were in water. Further, these spills were generally very small. Only 13 of those spills were greater than 1,000 gallons. Put another

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way, only about 0.02 percent of all oil spill incidents in and around U.S. waters over the last seven years were spills of animal fats or vegetable oils greater than 1,000 gallons.

Accordingly, imposing costly statutory response plan requirements intended for petroleum oils upon producers and transporters of animal fats and vegetable oils is unjustified and would represent a misapplication of limited industry resources. Moreover, the statute's emphasis on containing and removing a spill of petroleum oils is particularly inappropriate for a spill of non-toxic animal fats or vegetable oils. Attempts to remove the small quantities of these animal fats and vegetable oils in a typical spill of the kind described above would in most cases cause more environmental harm than would the presence of those products in the environment.

The comments of the Department of the Interior (DOI), dated June 3, 1993, reveal the fundamental flaws of comparing animal fats and vegetable oils to petroleum oils. On the basis of anecdotal data derived from a discharge of butter from a U.S. government warehouse into Shoal Creek, Maryland, DOI recommends the establishment of response plan requirements for animal fats and vegetable oils comparable to those for other oils. DOI concedes, however, that the principal adverse environmental effects of the Shoal Creek incident were caused by the removal efforts themselves. Reliance upon such anecdotal experience underscores the dangers of proceeding to impose regulatory requirements on the industry in a manner not specifically intended by Congress and without adequate scientific foundation. In fact, no documented scientific data support treating these non-toxic animal fats and vegetable oils in the same manner as petroleum.

CONCLUSION

The Interim Final Rule as it implements the response plan provisions of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act, is consistent with established regulatory principles and is appropriate for non-toxic, non-petroleum oils such as animal fats and vegetable oils, whose incidence of spills is minuscule compared to other substances. Accordingly, a markedly different approach to response and removal methodologies may be appropriate as well.

The industry will continue to seek data to determine the environmental risks associated with the transportation, handling,

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and storage of animal fats and vegetable oils. on the basis of scientific data developed to date, however, there is no foundation for altering the thresholds used to define facilities that could reasonably be expected to cause substantial harm by discharging non-toxic non-petroleum oils into the environment. Further, there is no rational basis for regulating potential discharges of these non-toxic animal fats and vegetable oils in the same manner as discharges of petroleum oils under the Federal Water Pollution control Act. In fact, it may well be that the imposition of costly removal requirements upon the industry could cause a greater threat to the environment than the actual discharge of these animal fats and vegetable oils themselves.

We appreciate the opportunity to submit these comments.

Very truly yours,



Warren L. Dean, Jr.
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